SIM KON SANG PETER @ PETER SIM (SUING AS ADMINISTRATOR OF THE ESTATE OF CHONG YU TAI (F) DECEASED)

v.

DATIN SHIM TOK KENG @ SIM CHOK KEN

HIGH COURT BORNEO, TAWAU
TUAN IAN H.C. CHIN J.
[CIVIL SUIT NO. T79 OF 1988]
9 MAY 1994

CONTRACT: Sale of land - Memoranda of transfer signed by transferor when mentally unsound - Whether transfer of land void or voidable - Transfers effected before coming into force of Contracts Act 1950 in Sabah - Law applicable - Whether Conracts Act 1950 of retrospective effect - Whether English common law applicable - Whether transferee must have knowledge that the transferor was of unsound mind.

EVIDENCE : Burden of proof - Transfer of land - Plaintiff pleading that the executant of the Memorandum of Transfer was of unsound mind - On whom lies the burden of proving that the execution of the transfer was during a lucid interval.

STATUTORY INTERPRETATION : Circumstances in which a statute can be interpreted retrospectively - Whether Contracts Act 1950 can be interpreted to be retrospective.

The deceased was suffering from chronic schizophrenia and was allegedly of unsound mind. She had on 6 September 1973 and 20 June 1974 effected two memoranda of transfers of land in favour of the defendant. The plaintiff as the administrator of the estate of the deceased is seeking a declaration that the deceased was not competant to contract with the defendant in respect of the said transfers and sought the retransfer the said land and other reliefs.

The defendant contended that as at the time of transfer the law applicable was the English Common Law and not the Contract Act of 1950 and that the contract was not void but voidable. The defendant further contended that the plaintiff ought to have opted for avoiding the contract and that to do so it is not merely sufficient to prove insanity of the deceased, but that the defendant had knowledge of the same. Both the parties led evidence with regard to the mental health of the deceased and the periods of her insanity and other relevant aspects.

The issue to be decided by the Court was whether the Contracts Act 1950, or the English Common Law would apply and whether the deceased was insane during the relevant period when the transfers were effected and whether the defendant had knowledge of the deceased's mental state.

Held:

[1] The Contracts Act 1950 came into force in Sabah on 1 July 1974 and the language of the Act does not provide for the Act to have retrospective effect. The defendant having acquired the right under the contract according to the principles laid down in *Yew Bon Tew & Anor v. Kenderaan Bas Mara*, the statute should not be interpreted retrospectively. It is the English Common Law that applies to this case. The contract is therefore not void but voidable.

[2] From the evidence on record and in particular relying on the expert evidence, the deceased was mentally unsound when the memoranda of transfers were executed. The defendant has not discharged the burden of proving that at the time of the execution of the memoranda of transfer, the deceased was in a lucid interval.

[3] Though the plaintiff has proved that the deceased was of unsound mind on the dates she signed the memoranda of transfer, he has failed to prove that the defendant had knowledge of the deceased's unsound mind. Since it is the law that the plaintiff must prove not only the

insanity of the deceased, but also the fact that the defendant at the relevant time knew of the insanity, the plaintiff's claim must necessarily fail.

[Plaintiff's claim dismissed with costs to be taxed].

Cases referred to:
Asia Commercial Finance (M) Bhd. v. Yap Bee Lee & 6 Ors. [1991] 1 CLJ 271 ***(refd)***
Imperial Loan Coo. v. Store [1982] 1 QB 599 ***(refd)***
Tan Hee Juan v. Teh Boon Keat & Anor. [1934] MLJ 96 ***(refd)***
Yew Bon Tew & Anor. v. Kenderaan Bas Mara [1983] 1 CLJ 11 / [1983] 1 MLJ PC ***(foll)***
Molyneux v. Natal Land and Colonization Co. Ltd. [1905] AC 555 PC ***(cit)***
Daily Telegraph Co. Ltd. v. Mclaughlin [1904] 1 CLR 243 ***(cit)***
In re Walker [1905] 1 Ch. 160 ***(cit)***
Che Som bte Yip & Ors. v. Maha Pte. Ltd. [1989] 2 CLJ 893 / [1989] 3 MLJ 468 ***(cit)***
York Glass Co. Ltd. v. Jubb [1925] All ER 285 ***(refd)***
Hart v. O'Connor [1985] 2 All ER 880 ***(refd)***
Hall v. Warren [1893] All ER Rep. 57 ***(refd)***
Cartwright v. Cartwright & Ors. [1775-1802] All ER Rep. 476 ***(refd)***
Wong Swee Chin v. PP [1981] 1 MLJ 212 ***(cit)***

Legislation referred to:
Contracts Act 1950
Limitation Ordinance (Cap. 72), s. 3
Lunatics Ordinanceof Sabah (Cap. 74), ss. 4 (2), (3)(c), (3)9a), (4)
Contracts Act, ss. 10 & 11 (India)
Lunacy Act 1890, s. 120 (UK)

Other sources referred to:
Chitty on Contracts, 26th Edn., Vol. 1, paras 18, 617
Halsbury's Laws of England, 4th Edn., Vol. 30
Law & Contract, Visu Sinnadurai, 2nd Edn., p. 321
The Law of Contract in India (1983), V.G. Ramchandran, pp. 309, 401

For the plaintiff- Simon Shim (Datuk Lawrence Thien with him); M/s. Chau & Thien
For the defendant - Ho Kin Kong; M/s. Ho Kin Kong & Co.

JUDGMENT

Ian H.C. Chin J:
This case took us back not only to the 1950's but the subsequent two decades as well and the writ herein was taken out on 15 September 1988 to have two transfers of land, one done on 6 September 1973 and the other on 20 June 1974, declared void on the ground that the transferor, to the knowledge of the transferee, was at that time of unsound mind. It was only on 2 May 1991 that the plaintiff set this case down for trial.

The Statement of Claim

The claim is by Peter Sim Kon Sang in his capacity as the administrator of the estate of one Chong Yu Tai (f) deceased ("the plaintiff") against the defendant Datin Shim Tok Keng @ Sim Chok Ken ("the defendant"). The plaintiff's claim is that the said Chong Yu Tai when she was alive on two occasions transferred to the defendant certain undivided shares of her land constituted in Country Lease No. 105097274 ("the land") when she was, as the defendant well knew, of unsound mind at the time of executing the transfers and incapable of understanding the same. The first transfer took place on 6 September 1973 and was in respect of 96/135 undivided share while the second transfer took place on 20 June 1974 and was in respect of 32/39 undivided share. The transfers, the plantiff claims, are void and of no effect and the plaintiff claims the following reliefs:

(1) A declaration that the late Chong Yu Tai (f), deceased was not competent to contract with the defendant in respect of the transfer of 96/135 undivided share and 32/39 undivided share under

Memorial No.00121538 and Memorial No. 00129185 respectively in C.L. 105097274, Tawau, the said Chong Yu Tai (f), deceased being not of sound mind at all material times as the defendant then well knew.

(2) A declaration that the purported transfers of the said 96/135 undivided share and 32/39 undivided share under Memorial No. 00121538 and Memorial No. 00129185 respectively in C.L.10509274, Tawau by the said Chong yu Tai (f), deceased to the defendant were and are void and of no effect and ought to be set aside.

(3) An order that the defendant do forthwith execute memoranda of transfer to transfer the said 96/135 undivided share and 32/39 undivided share under Memorial No. 00121538 and Memorial No. 00129185 respectively in C.L. 105097274, Tawau to the plaintiff as administrator of the estate of the said Chong Yu Tai (f), Deceased.

(4) An injunction to restrain the defendant by herself, her servants or agents or howsoever otherwise from transferring, charging, leasing or otherwise howsoever dealing with the said 96/135 undivided share and 32/39 undivided share under Memorial No. 00121538 and Memorial No. 001229185 respectively in C.L. 105097274, Tawau.

(5) Damages.

(6) Costs.

(7) Further or other relief.

The Defence

The defendant in her defence maintains that she paid a total sum of RM33,000 for the said transfers. She denied that the said Chong Yu Tai was at the relevant time of unsound mind. She added that, in any event, she had no knowledge that Chong Yu Tai was at that time of unsound mind and that she was not aware of any circucmstances, medical or otherwise, that may lead her to believe Chong Yu Tai was of unsound mind. She also maintained that the plaintiff's claim is barred by s. 3 of the Limitation Ordinance (Cap.72).

The Issues

From the pleadings, the issues to be decided appear to be:

(1) whether Chong Yu Tai was on 6 September 1983 and on 20 June 1984 of unsound mind;

(2) whether, if the answer to issue (1) is in the affirmative, the defendant at the relevant time knew Chong Yu Tai was of unsound mind;

(3) whether the claim is statute-barred; and

(4) whether, if the answers to issue (1) and (2) are in the affirmative and the answer to issue (3) is in the negative, damages are recoverable by the plaintiff.

There are other issues which were advanced in the closing speeches of Counsel and which I will refer to later but first to the history of this case.

Staggered Trail

I began hearing evidence on 30 March 1992. Unfortunately, on 1 April 1992, Mr. Simon Shim, Counsel for the plaintiff, asked for an adjournment in order to get his expert witness. I then made the order that the proper bundle of documents be filed and that the date for continued hearing was to be fixed when the plaintiff's expert witness was sure of the dates the expert can come to testify. After plaintiff's Counsel had assured the Senior Assistant Registrar that the expert was coming, I next sat on 21 September 1992 but unfortunately Mr. Simon Shim on that date informed the Court that he would ask for an adjournment after all his witnesses had given evidence because the expert could not make it from India. The case proceeded daily until 24 September 1992 when the case had again to be adjourned and I then remarked that the case should not proceed in this staggered manner. The expert was finally procured and I sat on 30 November 1993 and the case continued daily until 4 December 1993. On the last mentioned date, it was the turn of Mr. Ho Kin Kong, Counsel for the defendant, to ask for an adjournment to allow his expert to give evidence. The defence had by then called five witnesses. I then adjourned the case to 16 March 1995 but the date was brought forward to 12 April 1994 when that date and the following few days that were reserved for a criminal trial were available because the criminal trial did not require all those days on account of a plea of guilty to a reduced charge when the criminal case was mentioned in advance of the scheduled date of trial. This case thereafter

proceeded on 12, 13, 18 and 19 April 1994. I thereafter reserved my judgement. I have to state here that by the time the Counsel were making their closing speeches I can hardly remember, on account of the staggered trial, what the witnesses look like let alone recall their demeanour. Fortunately, the demeanour of a witness of the least importance when evaluating the evidence and when there are other evidence. I will proceed to state the evidence adduced by the plaintiff.

The Plaintiff's Evidence

People associated with Chong Yu Tai were called and they gave evidence regarding the behaviour of Chong Yu Tai during the time they knew her. First to testify was one Askan bin Jalin ("Askan") who was her workmate. Though not sure as to the time, he testified that it was probably in the 1950s that he observed that Chong Yu Tai was "crazy" because she undresed herself in public. He also said that it was after Chong Yu Tai was "crazy" that he saw the defendant and her husband walking on a road which led to the house of Chong Yu Tai. Next to testify was Chin See Moi (PW2), who became the daughter-in-law of Chong Yu Tai in 1966 and who stayed with Chong Yu Tai. She described various behaviour of Chong Yu Tai which she termed as "madness" and that this "madness" persisted from 1966 until 1986 when Chong Yu Tai died. She testified that the defendant and her husband came regularly to visit Chong Yu Tai and these visits became very often in 1973 and 1974. She witnessed many occassions where Chong Yu Tai undressed before the defendant and her husband when they were visiting Chong Yu Tai. Wong Kim Moi (PW3), the daughter of Chong Yu Tai, also testified as to the abnormal behaviour of Chong Yu Tai and the visits by the defendant and her husband. The said Peter Sim Kong Sang (PW3) also testified to the abnormal behaviour of Chong Yu Tai. He said that his mother was crazy every 4 to 6 months and was admitted to the Tawau and later the Sandakan hospital sometime between 1946 and 1950. He testified that in between 1953 and 1961 his mother was in Sandakan. The mother returned to Tawau in 1961 and he had to look after the mother in the afternoon while he went to school in the morning. Between the years 1961 and 1970, the mother, according to him, exhibited abnormal behaviour, like stripping herself, beating on tins and running round the land. Her condition worsened during the period between 1970 and 1975 and she became mentally unsound evey other month. In 1970 he had on two occasions applied to the Court to have the mother committed under the Lunatics Ordinance. During the period from 1971 to 1978, the mother was treated as an outpatient every month. He testified that he witnessed his mother being visited by the defendant and her husband in 1972 and that his mother exhibited her abnormal behaviour. He also saw the defendant visit his mother in 1973.

The plaintiff called two doctors. Dr Lee Choon Hoong, a general practioner, testified that he examined Chong Yu Tai on several occasions pursuant to the provisions of the Lunatics Ordinance of Sabah. The first of which was on 3 September 1981 and he found her to be lunatic and a proper person to be taken charge of and detained under care and treatment pursuant to the provisions of the Lunatics Ordinance of Sabah. He found the facts indicating insanity to be: "Violence, running amok, imitating, carrying sharp weapon around town". He again examined Chong Yu Tai, this time on 26 October 1981 and he also made the same certification and the facts indicating insanity were found by him to be: "Abnormal behaviour with conceptual thoughts and acts in an inexplicable way without warning, eg. shouting, violence - emotions are blunt, behaviour add." The last time he examined her was on 7 January 1982 and the facts he found as indicating insanity were: "Embarrassment to her children and relative, frequent becomes violence and shouting. Known case of paranoid schizophrenia". As a result of his said certifications, Chong Yu Tai was on three separate occasions comitted to the relevant hospital in Kota Kainabalu but was later released.

The other doctor to testify was a psychiatrist named Dr Dipendu Sarbadhikary (PW7). He testified that between the years 1971 and 1978 he saw Chong Yu Tai about 40 times. As regards the descriptions of the behaviour of Chong Yu Tai which the other witnesses had given in Court, he was of the opinion that they fit the description of a person being a schizophenic. He was also of the opinion that Chong Yu Tai was a schizophernic during the period from 23 March 1971 to 24 April 1974 which covers the two occasions when the transfers were executed by Chong Yu Tai. He testified that Chong Yu Tai was by 24 April 1974 a chronic schizopherenic and that he

would not advise Chong Yu Tai to execute the trasfers made on the 30th July 1973 and on 14 April 1974. He is also of the opinion that Chong Yu Tai's mental condition persisted from 24 April 1974 until 5 April 1978. More of the evidence will be adverted to when I deal with the conflicting opinions of this expert and that of a Dr. Wong Yip Chung (DW6)who testified for the defence. The medical notes will also be referred to later.

The Defence' Evidence

The defendant testified that she knew Chong Yu Tai since 1950 but claimed that they were "ordinary friends". She also said that the plaintiff stayed in her house when he was 15 years old (which would be around the year 1952) after his mother Chong Yu Tai had pleaded with her to take him in. She said the plaintiff, and other children as well, worked in the shop to support their education. The title to the land was since 1955 kept in her office. From around the year 1970 Chong Yu Tai used to visit her in her house two to three times a month, mostly in the morning and only leaving at 3.00 p.m. after Chong Yu Tai had lunch together with the servant and after Chong Yu Tai had her naps. These visits continued for a few months until after the second transfer of land in 1974. The Defendant and her husband had also visited Chong Yu Tai in her house and these visits were to give Chong Yu Tai food. The defendant and her husband sometime in 1966 took out an advertisement in a newspaper congratulating the plaintiff on the occasion of the plaintiff's engagement to marry.

As for the transfer of 6 September 1973, she said Chong Yu Tai came to her house several times and asked her to buy and she bought 6 acres of the said land at RM4,000 per acre but she paid RM28,000. As for the transfer form, she said it was executed in the Land Office and witnessed by a Peter Lee (DW2). She testified that she did not notice anything amiss about the behaviour of Chong Yu Tai and that were none of the behaviour which the plaintiff's witnesses had described. The sum of RM28,000 was paid by the defendant to Chong Yu Tai in the defendant's house and the money was paid more than one week after the execution of the memorandum of transfer. The transfer was signed on 14 February 1974 after Chong Yu Tai had asked the defendant to go to the Land Office to sign memorandum of transfer. Chong Yu Tai did not go with the defendant and she did not sign at the same time but the defendant said she saw her sign in the Land Office before one Peter Lee. She paid RM4,000 for the second transfer and the money was also paid in her house.

The Law

It appears from the pleadings that the issues were only whether Chong Yu Tai was at the relevant time of unsound mind and whether the defendant, at the said relevant time, knew that Chong Yu Tai was of unsound mind but this is not to be so. Mr. Simon Shim argued that the two transfers of the land were void and not merely voidable and, as a result thereof, it matters not whether or not the defendant knew Chong Yu Tai was at the relevant time of unsound mind; this, despite the plaintiff's averment in the statement of claim that the defendant knew. Mr. Ho Kin Kong, Counsel for the defendant, did not take exception to this issue being raised but he argued that the contracts were voidable and not void. Mr. Ho referred to *Asia Commercial Finance (M) Bhd. v. Yap Bee Lee & 6 Ors.*[1991] 1 CLJ 271, a decision of Peh Swee Chin J. (as he then was), which held that a guarantee entered into by a person of unsound mind was not void but voidable and the case of *Imperial Loan Co. v. Store* [1982]1 QB 599 was citied as authority for the decision. Mr. Ho cited a passage of Lopes, LJ, at p. 414, in *Imperial Loan Co. v. Store*, which says:

> The result of the authorities on this branch of law may, I think, be summed up thus. A contract made by a person of unsound mind is not voidable at that person's option if the other party to the contract believed at the time he made the contract that the person with whom he was dealing was of sound mind. In order to avoid a a fair contract on the ground of insanity the mental incapacity of the one must be known to the other party. A defendant must plead and prove both his insanity and the knowledge of the plaintiff; the burden of proof of both those facts lies on the defendant.

Another authority supporting this proposition of law that a contract by a person of unsound mind is only voidable is **Chitty on Contracts,** 26th Edn, Vol. 1, at para. 18. Mr. Ho argued that since

the two transfers took place before the Contracts Act 1950 ("the Act") came into force in Sabah on 1 July 1974, the law to be applied is the English common law and therefore, Mr. Ho further argued, cases decided in reference to the Act or the Indian Contracts Act cannot be relied on. Mr. Shim replied, *inter alia,* that the law governing this case is the Act because when this action was commenced on 15 September 1988, the Act was already in force and that the consequence of ss. 10 and 11 of the Act is that the two transfers are void and not merely voidable and he referred to Visu Sinnadurai on **Law & Contract,** 2nd Edn. at p. 321 and to the cases referred therein. It is common ground that the common law is different from the Act and confirmation of this view can be found in V.G. Ramcharndran on **The Law of Contract in India (1983)** at pp. 401, where it is said:

> In English Law the contract of a person of unsound mind is not void but voidable at his option if the other party had notice of the insanity at the time of making the contract. But in India a person of unsound mind is absolutely incompetent to contract.

This question of whether the contract is void or voidable, assuming for the moment that insanity is proved, is of relevance for more than one reason because one of the contentions of the defendant is that the plaintiff had not elected to avoid the two transfers and therefore the two transfers, being voidable, have not yet been avoided and becuase the defendant's knowledge of Chong Yu Tai's insanity is of no consequence in the event the transactions are void and not merely voidable. As for the cases referred to as supporting the contention that the two transfers are void, the first was *Tan Hee Juan v Teh Boon Keat & Anor*. [1934] MLJ 96 which deals with a transfer of land by an infant and which the Court there held to be void. This is what the Court says in that case, at p. 96, viz:

> The Privy Council have held that the effect of ss. 10 and 11 of the Contract Act of India is that an infant cannot make a contract within the meaning of the Act, and that a contract made by an infant is not only voidable but void (*Mohori v. Dharmodas Ghose*, 30 Calcutta 539). The decision of the Privy Council is binding on this Court, and therefore there can no doubt whatever that those transfers are void.

For ease of reference, ss. 10 and 11 are reproduced here, viz:

> 10. What agreements are contracts
>
> (1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.
> (2) Nothing herein contained shall affect any law by which any contract is required to be made in writing or in the absence of witnesses, or any law relating to the registration of documents.
>
> 11. Who are competent to contract.
>
> Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law which he is subject.

Since s. 11 of the Act covers not only cases relating to the age of majority but also cases of unsoundness of mind, the decision in *Tan Hee Juan v. Teh Boon Keat & Anor*, though a decision in respect of a want of age, applies equally to a case relating to unsoundness of mind. Therefore, if the Act applies to the present case, it means that any contract made by a person of unsound mind is void and not merely voidable. The contrary is the case if the English common law applies. See *Asia Commercial Finance (M) Bhd. v. Yap Bee Lee & 6 Ors.* and *Imperial Loan Co. v. Store (supra).* The question to be answered, therefore, is whether the English common law or the Act applies to the present case. This, I am of the view, in turn depends on whether the Act is retrospective since the Act came into force after the execution of the two transfers. As for retroactivity *Yew Bon Tew & Anor v. Kenderaan Bas Mara* [1983] 1 MLJ 1 PC, at p. 2, has this to say:

> Apart from the provisions of the Interpretation Statutes, there is at common law a *prima facie* rule of construction that a statute should not be interpreted retrospectively so as to impair an existing right

a or obligation unless that result is unavoidable on the language used. A statute is retrospective if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past.

What right, then has a person under a voidable contract (the contract was then governed by the English common law which applied to Sabah)? The answer is necessary for the determination of whether any existing right or obligation has been impaired. The answer can be found in **Chitty** b **on Contracts,** 26th Edn., Vol. 1, at para. 18, the relevant part of which I quote:

... If the contract is wholly executory, the party entitled to avoid the contract can plead its voidability in an action against him. If it has been wholly or partly executed, he can claim to have it set aside and to be restored to his original position. But until the right of avoidance is exercised, the contract is valid. Thus if a contract for the sale of goods is voidable for fraud (but not avoided), the frudulent party will acquire a good title to the goods which he can transfer to an innocent purchaser for value. The right of avoidance must also be exercised promply in most cases.

c Clearly, a person under an executed but voidable contact, like in this case where immovable property had been trasferred and, at one time, registered in the name of the defendant, would have acquired a right under the contract. In this case, the defendant at the relevant time had her name registered as the owner of the land. Since there is this acquired right and according to the principle laid down in *Yew Bon Tew & Anor v. Kenderaan Bas Mara*, the Act cannot have retrospetive effect. The language of the Act also does not provide for the Act to apply d retrospectively. The English common law therefore applies to this case. Mr. Shim had also referred to the case of *Molyneux v Natal Land and Colonization Co. Ltd.* [1905] AC 555 PC and argued that the transfers are void and not voidable but that case was decided under the Roman-Dutch Law which does not pertain here and therefore the case is of no relevance. The case of *Daily Telegraph Co. Ltd v. Mclaughlin* [1904] 1 CLR 243 was cited but it cannot be an authority that a contract made by an insane person is void and not voidable; that case deals with the capacity to act as principal. Mr. Shim finally referred to *In re Walker* [1905] 1 Ch. 160 which held e that when a person has been found lunatic by inquisition, so long as the inquisition has not been superseded but continues in force, he cannot, even during a lucid interval, execute a valid deed dealing with or disposing of his property and Mr. Shim argued that the transfers are void because Chong Yu Tai had been found a lunatic under the Lunatics Ordinance. *In re Walker* is a decision on the Lunacy Act of 1980 of England, and it concerns a disposition of property by a lunatic before the approval of the Judge was obtained under s. 120 of that Act. In our case, though Chong Yu Tai was on two occasions in 1970 remanded for observation by a doctor but there was no evidence f that she was certified a lunatic and even if she had been, she had been apparently discharged by her release from the hospital. Her release from the hospital is at least indicative, assuming she had been certified insane, that it had been superseded. It is significant that on at least two of her subsequent admissions to hospitals after the transfer of 20 June 1974, she was certified insane; there is no such certificates in respect of the two admissions to hospital in 1970. I am, as result thereof, of the view that *In re Walker* can thus be distinguished from our case.

g As for the argument of Mr. Ho which was that the plaintiff had not elected to avoid the two transfers and as to the Singapore case of *Che Som bte Yip & Ors v. Maha Pte Ltd* [1989] 3 MLJ 468, Mr. Shim replied that the point was not pleaded and therefore could not be raised and that, in any event, a letter issued by the plaintiff's advocates on 18 April 1988 amounted to an election to avoid, that is, it amounted to a repudiation of the two transfers. The letter reads:

18 April 1988.

h

Datin Shim Tok Keng @
Sim Chok Ken
[Etc...]

Re: Tawau C.L.105097274 Owner Chong Yu Tai (f)

(a) Reg.Memo No.001215338 of 6 September 1973
i Transfer of 96/135 share to Shim Tok Keng
alias Sim Chok Ken (Subject to M.88071)

(b) Reg.Memo No.00129185 of 20 June 1974
Transfer of 32/39 share to Shim Tok Keng
alias Sim Chok Ken (subject to M.88071)

We act for and at the instruction of Mr.Shim Kon Sang @ Peter Sim of Tawau the Administrator of the Estate of his late mother Chong Yu Tai (f), Deceased with reference to the above matter.

It is our client's instruction:

(a) that his late mother is registered owner of C.L. 105097274 to the extent of 7/135 undivided share on the title to the said land.
(b) that on this said title you are registered as the 'co-owner' to the extent of 96/135 undivided share and 32/39 undivided share respectively.
(c) that notwithstanding (a) and (b) above that the whole share of the said C.L. 105097274 legally belonged to our client's late mother for reason that the purported transfers of the above stated shares to you are void and of no effect as at the material times our client's late mother was not competent to contract she being not of sound mind.
(d) that our client is in possession of conclusive medical evidence to show that his late mother was not of sound mind as stated.
(e) that you by yourself or your agents or servants have trespassed onto the said land and even demanded that our client and his family vacate the said land.
(f) that our client as adminstrator and beneficiary of the said land intends to apply to Court to set aside the said transfers to yourself unless you are prepared within 14 days from date hereof to voluntarily return the said shares of the said land to our client or his nominee by executing the necessary transfer documents.

We therefore request that you give us a reply as to whether you would execute the said transfers to our client as stated aforesaid failing which our client will proceed to legal proceedings without further reference to you.

Yours faithfully,

[Signed Chau & Thien, Advocates]

There cannot be any doubt that this letter *(supra)* clearly expresses the intention not to be bound by the two transfers and in fact demanded the retransfer of the land. This letter expressly impugnes the two transfers. Therefore, there was an election which repudiated the two transfers. If that letter is not enough to amount to repudiation, then surely, the commencement of the action herein is. The decision in this case does not turn on that point. It is also unnecessary to decide whether the point ought to have been pleaded. I will now turn to the legal principles relevant to this case.

It is the law, that is the common law, that the plaintiff must prove not only that Chong Yu Tai was at the relevant time of unsound mind but must also prove that the defendant knew Chong Yu Tai was at the relevant time of unsound mind. See *Imperial Loan Co. v. Stone (supra)* at p. 413 (cited with approval in *Asia Commercial Finance (M) Bhd v. Yap Bee Lee & 6 Ors. (supra);* and *York Glass Co. Ltd v. Jubb* [1925] All ER 285. This means, if the defendant was not aware that Chong Yu Tai was, at the relevant time, of unsound mind, then the plaintiff's claim fails even if Chong Yu Tai was at that time in fact of unsound mind. Thus it was held in *Hart v. O'Connor* [1985] 2 All ER 880 that:

> Where a contract was entered into by a person of unsound mind whose affliction was not apparent and whose consequent incapacity was not known to the other contracting party the validity of that contract was to be judged by the same standards as a contract made by a person of sound mind. Accordingly, the contract was not voidable by the person of unsound mind or by his representative on the ground that it was unfair, in the sense of there being contractual imbalance betwee the parties, unless the unfairness amounted to equitable fraud which would have enabled the complaining party to avoid the contract if he had been sane.

I also take it to be the law that, where a contract has been entered into by a person whose general lunacy has been established, a party aware of this fact and who alleges a contract has been entered into during a lucid interval, must discharge the onus of proving, not merely a cessation

of violent symptoms, but a restoration of the mind of the lunatic sufficient to enable him to judge soundly what he was doing. See *Hall v. Warren* [1893] All ER Rep. 57. An elaborate statement of this law can be found in *Cartwright v. Cartwright & Ors* [1775-1802] All ER Rep. 476, viz:

> If, on the question of the legal capacity of a person to do a particular act, e.g., make a valid will, it is established that, while he was habitually afflicted by a malady of the mind he had intermissions of the disorder and that there was such a intermission at the material time, that is sufficient to prove capacity and the general habitual insanity will not affect it. Until proof of habitual insanity is made the presumption is that the person in question is rational, but where the habitual insanity of that person is established the party who would take advantage of the fact of an interval of reason must prove it. The best proof of a lucid interval that can arise is that which arises from the act itself, e.g., if a will provides for a rational disposition of the testator's property to the most natural beneficiaries and the appointment of the most natural and proper executors. If it can be proved that it is a rational act rationally done, capacity is prove.

The proof of capacity or incapacity is stated in the following paragraphs of **Halsbury's Laws of England,** 4th Edn., Vol. 30, in this way viz:

> 1387-Presumption. Every person is presumed to have mental capacity until the contrary is proved....Where a person has been proved or admitted to have been so mentally disordered as to lack the capacity to make a contract or dispositions, such a condition is presumed to continue until it is proved to have ceased, and the burden of proving a recovery or a lucid interval lies on the person alleging it. It has also been said that the evidence to prove capacity must be as strong as that required to prove incapacity.
>
> 1388-Proof of capacity or incapacity. In general, the question whether or not a person is so mentally disordered as to lack capacity for the act in question is one of fact for the Court. The opinion of medical experts who have examined a person is admissible, on the question whether or not the person is suffering from mental disorder, and will no doubt carry considerable weight. However, the court must decide the issue on the totality of both medical and lay evidence ... In civil proceedings, the rationality of an act and the manner of doing it have been regarded as strong evidence that the person doing it did not lack capacity, even if he was liable to be detained at the time.

Conclusions

The first of the questions to be answered is whether Chong Yu Tai was of habitual insanity. I am of the view that there were lucid intervals and I can find support for this view in the evidence of the two experts, PW7 and DW2 whose evidence I will deal with later on in this judgement. PW6 testifed that his mother Chong Yu Tai was crazy every 4 to 6 months during the year 1946 to 1950 and that she had been admitted to the hospitals in Tawau and in Sandakan. When PW6 gave evidence it was on 21 September 1992 and he was then 55 years old which means that he was about 9 years old in 1946. Therefore, PW6 was in 1992 giving evidence as to what happened some 46 years ago; such evidence standing by itself can hardly be reliable. There is also no medical record to back this up. It is inherently improbable that anyone could remember such details. I am therefore of the view that it is not proved that Chong Yu Tai was of unsound mind during the years 1946 to 1950. It was also alleged that Chong Yu Tai was at one time or another of unsound mind during the years from 1953 to 1961 when she was in Sandakan. Here again there is no medical record to support this assertion of PW6 who was not even in Sandakan. It was in Sandakan that Chong Yu Tai remarried and gave birth to a child (who is PW3) in 1959; these facts make it more likely that she was then of sound mind, at least not exhibiting the abnormal behaviour described by the proseuction witnesses PW2, PW3 and PW6, as surely, if her mental condition was otherwise, no one would marry her; she got married instead. Aside from that Chong Yu Tai was able to raise loans in 1950, 1952 and 1953 and satisfied them and she also subleased her land in 1955 and 1958, all these activites tend to establish Chong Yu Tai to be of sound mind. Chong Yu Tai returned to Tawau sometime in 1961 and she was, according to PW6, from 1961 to 1970 of unsound mind at certain times. The evidence in this aspect is too imprecise to be of any help as regards whether, when and for how long Chong Yu Tai was during that period of unsound mind; here also there were no medical notes of the alleged hospitalisation in Tawau and Sandakan. As for the period from 1970 to 1975, PW6 asserted that Chong Yu Tai was mentally unsound every other month. Mr. Simon Shim, Counsel for the plaintiff, in his

closing speech, had conceded that there is no evidence to say that Chong Yu Tai was of unsound mind during the period prior to June 1970. PW7 also dare not say that Chong Yu Tai was not fit to sign any document for the period from 1 June 1960 to 23 June 1970. This takes us to the period from 19 June 1970 to 1 October 1984 where medical records were kept and produced in Court. It was on 19 June 1970 that Chong Yu Tai was, pursuant to a warrant of the Magistrates' Court issued under s. 4(2) of the Lunatics Ordiance (Cap.74) admitted to the Tawau Hospital. The relvenat part of the warrant says:

To: The Medical Officer-In-Charge, Tawau

Whereas Chong Yu Tai sex Female race Chinese (Hakka) aged 49 years this day appeared before me pursuant to the provisions of sub-section (2) of section 4 of the Lunatics Ordiance Cap.74.

And Whereas it has appeared to me that Chong Yu Tai is insane and I now charge you under this warrant to keep her under observation for a period of 7 days and to take such action as you see fit under s. 4(3) of the Ordinance.

Dated at Tawau this 19 June 1970

[signed]
Magistrate, Tawau.

The Lunatics Ordinance, referred to in the warrant *(supra)* made various provisions for events subsequent to the issuance of the warrant and these provisions are:

4(1) Any Magistrate may issue a warrant to bring before him for examination any person whom he may reasonably suspect to be insane and who appears to be destitute or friendless or who has been arrested in circumstances denoting an intention to commit an offence.

(2) If after examination it appears to the Magistrate that such person in insane, the Magistrate may remand him for obseravation by a registered medical practitioner for a period not exceeding one week.

(3) At the termination of such period the practitioner shall -

(a) certify such person insane, acompanying his certificate with a statement in Form D of the Schedule; or
(b) recommend his discharge; or
(c) apply for an extension of the observation period.

(4) If such person is certified insane the Magistrate shall issue an Order in Form A of the Schedule to the Superintendent to cause such person to be examined by an Asylum Medical Officer, not being the practitioner certiying under subsection (3), and if he be certified insane by such officer, to admit such person to an asylum to be detained therein until duly discharged. Every such order shall be taken to authorise the Superintendent to detain the alleged lunatic for further observation for a period not exceeding fourteen days from the date of the order pending a decisive opinion being formed as to his mental condition.

(5) In every case in which an Asylum Medical Officer shall refuse to certify insane the alleged lunatics under subsection (4) the person in whose custody such alleged lunatic is detained shall cause him to be brought before a magistrate within twenty-four hours of such refusal and the Magistrate may either discharge the alleged lunatic or order him to be detained for further observation:

Provided that no person shall be detained in accordance with the provisions of this subsection for a total period exceeding thirty days from the date on which he was first brought before the Magistrate.

(6) The Magistrate making any order under this section may direct that the property of any person committed to an asylum or detained for observation shall be liable for the expenses attending his custody and maintenance.

(7) Any lunatic committed to an asylum, if the Superintendent shall so certify in writing that such lunatic is not liable to fits of insanity such as may render him a danger to the public, may be discharged upon the relatives or friends of such lunatic entering into a bond in such sum as the magistrate may direct to be responsible for the proper care of such lunatic.

The following details about her while she was hospitalised pursuant to this warrant are gleaned from the medical notes, viz:

Period		*Behaviour & Medicine*
19 June 1970	- 11.30 a.m.	Very noisy, singing but coherent, rational co-operative and oriented.
20 June 1970		Very violent, banging doors and windows, refuses to take medicine, talking and shouting a lot.
	- 1 p.m. - 7 p.m.	Kept on singing, talking nonsense till 4 something 50 mg (Dinner time) Quiet.
	7 p.m. - 7 a.m.	Quiet, slept on and off.
21 June 1970	- 7 a.m. - 1 p.m.	Very violent, showed knife, refused medicine. 75 mg. (10.30 a.m.) Less violent, kept on singing and talking nonsense.
	- 1 p.m.	Still violent, talking nonsense whole afternoon, tried to escape and hit people.
	- 7 p.m. - 7 a.m.	Quiet and slept through night.
22 June 1970	- 7 a.m. - 1 p.m.	Still violent. 100 mg. (11.30 a.m.)
	- 1 p.m. - 7 p.m.	Still violent. 100 mg. (4.30 p.m.)
23 June 1970	- 7 p.m. - 7 a.m.	Making too much noise on and off 100 mg. (9.30p.m.) Slept on and off 100 mg. (5.00 a.m.)
	- 7 a.m. - 1 p.m.	Improve a bit. 100 mg. (1130 a.m.)
	- 1 p.m. - 7 p.m.	Still violent, banging hard on door and window, refused medicine.100 mg. (4.45 p.m.) slept.
24 June 1970	- 7 p.m. - 7 a.m.	Slept well throughout night. 100 gm (6.30a.m.)
	- 7 a.m. - 1 p.m.	Still violent, refused to take medicine.
	- 1 p.m. - 7 p.m.	Still violent. 100 gm (4.30 p.m.)
25 June 1970	- 7 p.m. - 7 a.m.	Violent, banging door and window, shouting loudly 100 gm (7.15 p.m.), 100 gm (6.30 a.m.)
	- 7 a.m. - 1 p.m.	Not much noise 100 mg
26 June 1970	- 7 p.m. - 7 a.m.	Too much noise 100 mg. (10.00 p.m.) slept on and off, quiet. 100 mg (6.30 a.m.)
	- 7 a.m. - 1 p.m.	Less violent 100 mg (11.45 a.m.)
	- 1 p.m. - 7 p.m.	Quiet.
27 June 1970	- 7 p.m. - 7 a.m.	100 mg (5 a.m.) Slept well and quiet.
	- 1 p.m. - 7 p.m.	Very violent. 100 mg (5.30 p.m.)
28 June 1970 -	7 p.m. - 7 a.m.	Slept throughout night. 100 mg (4.00 a.m.)
	- 7 a.m. - 1 p.m.	A bit quiet.100 mg (11.30 a.m.)
	- 1 p.m. - 7 p.m.	Still violent. 100 mg (5.00 p.m.)
29 June 1970	- 7 p.m. - 7 a.m.	Slept well throughout night 100 mg
	- 7 a.m. - 1 p.m.	Quiet
	- 1 p.m. - 7 p.m.	Not violent, talking by herself
30 June 1970 - 3 July 1970		Slept on and off 100 mg (?) Not violent, talking to herself slept well, talking to herself. Behaviour good. Quiet. Quiet slept well. Quiet, sleeping most of the time. Behaviour good. Slept well, quiet.

Since she was detained for more than the statutory 1 week, I assume that either an extension of the period for detention was obtained under s. 4(3)(c) or a certificate of insanity was issued under s. 4(3)9a) of the Lunatics Ordinance but there are no documents produced to support that. Since she was discharged on 3 July 1970 and since she was not detained in an asylum purusant to s. 4(4) of the Lunatics Ordinance, it is more probable that an extension of time was obtained followed by a recommendation for discharge; hence her discharge from the hospital. The history shows for the period she was hospitalized from the 19 to 29 June 1970 that Chong Yu Tai, when she was not asleep as a result of the medicine, was behaving in an abnormal manner, that is, in ways which could be attributed to a person of unsound mind. Except for 30 June 1970, she was thereafter not showing any sign of violence and was dicharged on 3 July 1970. While in hospital she was for most of the days given 300 mg of Largactil a day. The warrant committing her for observation, her detention in the hospital and the behaviour while she was in hospital are *prima facie* evidence that she was a lunatic during the period concerned. Conversely, her discharge on 3 July 1970 is also *prima facie* evidence that she was then at least lucid though she was still on medication after her discharge, they were on a very much reduced dosage of 100 mg. a day (as opposed to 300 mg. a day when she was hospitalised). The medicine was not a cure because that magic drug, even upto now, has yet to be found. The drug was for the purpose of maintenace, that is for the purpose of preventing the patient from relapsing to the condition for which she was admitted to the hospital.

Though she was supposed to turn up two weeks thereafter, the outpatient card shows she only turned up on 22 August 1970 when it was remarked that she was "fairly well" and she was again prescribed the same medicine and dosage, this time for three weeks. She was supposed to turn

up three weeks form that date but there is no record of her turning up and by that time, assuming she had been taking the medicine as prescribed, the medicine would have been exhausted. It could be safely assumed that she did not keep the appointment and the next record showed her admission to the hospital on 8 October 1970. What then was her condition during the period between 3 July 1970 and 7 October 1970? When she was first admitted on 19 June 1970, her son's name (PW6) was stated in her patient's card and this name must have come either from her or from PW6. Since she was already of unsound mind at that time, it is more than likely that it was PW6 who supplied the name rather than Chong Yu Tai who was then incoherent. Consequently, I am of the view that it must have been PW6 who initiated the step to have her admitted pursuant to the provisions of the Lunatics Ordinance. Therefore, at the very least, PW6 knew the steps to be taken to have his mother admitted. If she had again stripped herself, was violent or carried a weapon around, it would be safe to assume that PW6 would have caused her to be admitted as he had done previously on 19 June 1970 and subsequently on 8 September 1981, 7 January 1982 and 7 July 1982. That PW6 did not cause her to be admitted is, I am of the view, because she was, during the said period from 3 July 1970 till shortly before her admission 8 October 1970, not exhibiting any of the behaviour which would require her to be hospitalised. It could not be true then, as PW6 alleged, that she was of unsound mind, in the sense she stripped herself, carried a weapon and was violent, every other month. It was not till 8 October 1970, which is more than 3 months of her discharge from her first hospitalisation, that she was again, pursuant to s. 4(2) of the Lunatics Ordinance, admitted to the hospital and was diagnosed as being "maniac." The medicine prescribed was very much less then that given in the previous admision; it was 100mg. of Largactil a day as opposed to 300 mg a day. She was discharged on 26 October 1970 and prescribed 100mg. of Largactil a day. That was all that could be discerned from the in-patient card and there were no notes relating to this period of hospitalisation but since the magistrate who examined her on 8 October 1970 was of the preliminary view tht she was insane, I am in no position to disagree and it can be concluded that she was during that period also of unsound mind until she was again discharged on 26 October 1970 which again, is *prima facie* evidence that she was again lucid. She continued to attend the outpatient ward to be examined and prescribed with medicine and the occasions were as follows:

Date	*Remarks of Medical Notes*
23 November 1970	Well. Largactil 25 mg, Stelazime 1 mg. and Artane 2 mg - all twice a day for 6 weeks.
26 January 1971	Well. Above medicine repeated for 6 weeks.
23 March 1971	A chronic schizophernic. Largactil 50, 50, 100 mg. Artane 1 mg. twice a day.
11 May 1971	Medicine repeated.
18 May 1971	Largactil 100 mg. twice a day.
17 August 1971	Patient says medicine finished and asked for more. Says she has improved. Largactil 100 mg twice a day for 10 days.
23 February 1972	This chronic schizophrenic is now maintaining more or less in I.S.Q. on Stemetil 50 mg. twice a day. Largactil 300 mg night only. Artane 2 mg. twice a day. This could be continued for an indefinite period and supplied monthly. She can be referred back to me if required.
22 March 1972	Came to collect ... (1) Stemetil 50 mg twice a day, (2) Largactil 300 mg. night only, (3) Artane 2 mg. twice daily.
15 April 1972	Well. [Medicine repeated.]
13 June 1972	Well. [Medicine repeated.]
24 July 1972	Well. [Medicine repeated.]
19 August 1972	Came to collect medicine. [Medicine repeated.]
29 August 1972	Medicine repeated.
5 October 1972	Remain ISQ. Stemetil 25 mg twice a day, Largactil 200 mg night only, Artane 2 mg twice daily.
1 November 1972	[Medicine repeated.]
13 December 1972	[Medicine repeated.]
24 January 1973	[Medicine repeated.]
2 March 1973	[Medicine repeated.]
18 April 1973	Keeping well. [Medicine repeated.]

30 May 1973	Keeping well. Stemetil 25 mg twice daily, Largactil 200gm night only, Artane 2 mg. twice a day.
11 July 1973	Stemetil 50 mg morn + midday. Largactil 200 mg night only, Artane 4 mg twice daily.
1 August 1973	Cont. Stemetil + Largac. Stop Artane. Add Tremeril's tab twice daily.
22 August 1973	[Medicine continued.]
3 October 1973	Stemetil 75 mg twice daily, Largactil 200 mg night only. Tremeril twice daily.
8 October 1973	Patinet complained of bleeding. Given medicine.
12 October 1973	Still bleeding.
14 November 1973	Mentally same. Still "nervous"(?). Same medicine as 3 October 1973.
5 December 1973	Cont.
30 January 1974	Cont.
13 March 1974	Cont.(Artane 2 mg twice daily instead Tremeril)
24 April 1974	Stemetil 75 mg twice daily. Largactil 200 mg night only. Artane 2 mg twice daily.
12 June 1974	According to patient,keeping well. Appears autistic and apprehensive. Sleep and appetite good. No complaints. Stemetil 75 mg twice daily. Largactil 150 mg night only, Artane 2 mg twice daily.
7 August 1974	Cont.

So, in between 26 October 1970 and 7 August 1974, she was attended to as an out-patient for 33 times and the medical notes make no mention of her having exhibited any of those behaviour which PW6 described, such as violence, spitting, shouting, stripping herself and so on. It is safe to conclude that during the period covered by the 33 out-patient examination, she did not exhibit the behavior which PW6 complained of. The dosage of the medicine was comparatively lower for the period from about 26 October 1970 to 22 February 1972; it was at most 200 gm of Largactil per day. For this period, since she was not hospitalised and since the dosage was so much lower than before, it is probable that her judgement was not impaired and she could not be considered as of unsound mind. It was hinted that it was because of hospital policy, and not because she had recovered, that she was discharged but PW7 did say that a patient is only to be admitted "when it is absolutely necessary because the patient is a danger to herself or to others or the patient required special kind of treatment which was not possible outside the hospital." It could be safely concluded if the members of her family, that is PW2, PW3 and PW6, did not have her admitted to hospital it means that Chong Yu Tai was not exhibiting any violence or dangerous behaviour. For this period, that is from 26 October 1970 to 22 February 1972. I am of the view that she was lucid. However, the dosage became massive from 23 February 1972 when on that day the prescription was for the Largactil equivalent of 500 mg per day and this continued until 5 October 1972. Therefore for the period between 23 February 1972 until 4 October 1972, she, on account of the massive daily dosages of drug, was most probably incapable of understanding what she was doing. The same can also be said for the periods from 5 October 1972 until 11 July 1973, where the dosage was the equivalent of 300 mg.per day, for the period from 11 July 1973 to 2 October 1973 where it was the Largactil equivalent of 400 mg and for the period from 3 October 1973 to 11 June 1974 where it was the Largactil equivalent of 500 mg daily. From 12 June 1974, the dosage was reduced slightly to the Largactil equivalent of 450 gm daily and this dosage contined until 14 August 1974 on which date she was again admitted to the hospital and discharged on 24 August 1974. The medical notes relating to this period are as follow:

Period		*Behaviour & Medicine*
14 August 1974		Running in town, stripping herself. Twice patient here in 1970 and in Sim Sim Sandakan.
	- 4.20 -7 p.m.	Very violent shouting and banging the door.
15 August 1974	- 7 p.m. - 7 a.m.	Slept well. "Says she fell down, not sick, was pricked by nail on floor". Talking under pressure, flight of ideas, does not look depressed (afraid of being in cell. Diagnosis-Hypomania. Largactil. 100mg (twice daily)
	- 7 a.m. - 1 p.m.	Was slight violent while given breakfast this morning. 3 PM Talking a lot of nonsense.
	- 1 p.m. - 7 p.m.	Quiet after given Largactil 100 mg at 3.20 p.m. Behaviour well 100mg.
16 August 1974		Serenare prescribed. 0.5 mg, (twice daily)
18 August 1974	- 7 a.m. -1 p.m.	Quiet, complain of pain in neck. Unable to move. Seen by Dr Ho.
19 August 1974		Oral penicillin, Panadol and Artane.
21 August 1974	- 1 p.m. -7 p.m.	Talking a lot of nonsense. Slight violent. 1 m Largactil 100 mg given at 6.30 a.m.

22 August 1974	- 7 p.m. -7 a.m.	Talking a lot of nonsense. Slight violent. Tried to run away and strip her clothing in the ward. Does'nt want to have injection. Still disturbing and stripping herself in ward. Not sleeping despite sedative.
	- 1 p.m. - 7 p.m.	At 1.30 very violent. Given 1.m 25 mg Largactil 3 pm, son does not want her back. Given Serenance 1.5 mg twice a day and Largactil 200 gm at night only.
23 August 1974		Abscess, left forearm.
24 August 1974	- 7 p.m. - 7 a.m.	Slept on and off last night. Walking around the ward. Talking nonsene. Largactil tab given 100 mg. Keeping well. Drained. Discharged. Follow up.

After her discharge, she was seen on 28 August 1974 and given Largactil 150, 150 and 300 mg and Artane 2 mg twice a day for three weeks. When she was seen on 18 September 1974 her medication was increased, Largactil to 200, 200 and 300 mg, Artane 2 mg twice a day for 4 weeks. The same dosage of medicine was prescribed on 18 September 1974. When she was seen on 30 October 1974 she was noted as "talking to herself, otherwise OK" and was prescribed Stemetil 75 mg twice daily, Largactil 200 mg night only. Artane 4 mg twice daily and this prescription was repeated on 11 December 1974, 8 January 1975 and 19 February 1975. She was thereafter under constant medication and treatment, including 6 admissions into the hospital, until she died on 13 August 1986. I am of the view that from 27 August 1974, her condition was deteriorating and the large dosages of the medicine are indicative of the seriousness of her condition and of her being totally out of touch with reality. To summarise, my findings as to the period of insanity and lucidness are as follows:

Period	Findings
1946 to 1950	Not insane
1950 to 1961	Not insane
1961 to 1970	Not insane
1970 to May 1970	Not insane
19 June 1970 to 2 July 1970	Insane
3 July 1970 to 7 October 1970	Not insane
8 October 1970 to 26 October 1970	Insane
27 October 1970 to 22 February 1970	Not insane
23 February 1972 to 4 October 1972	Insane
5 October 1972 to 11 July 1973	Insane
12 July 1973 to 2 October 1973	Insane
3 October 1973 to 1986	Insane.

I am of the opinion that for the period from 19 June 1970 to the time of her death in 1986, Chong Yu Tai was of habitual insanity. In coming to those conclusions, I have apart from the evidence of Dr. Lee Choon Hoong *(supra),* also taken into account the expert opinions called by both parties. PW7 produced a written opinion (exhibit P79), in the form of a letter, in response to a letter of Mr. Simon Shim and the relevant part of the opinion, after corrections requested by PW7 were made, reads:

> The following report on Madam Chong Yu Tai (now decease) is being made by me on the basis of the photocopy of her hospital notes and related documents sent by you.
>
> 1. Mam Chong Yu Tai was attended by me at Tawau General Hospital out-patient and in-patient departments quite frequently during 1971 to 1978 period. I guess she was also treated in Bukit Padang Hospital at different times when I might have attended her, but there is no documentary evidence in my hand.
> 2. The diagnosis was made by me as Chronic Schizophrenia. Later, in 1974, the diagnosis was changed to hypomania (Manic Depressive Psychosis) which was serious and recurrent in type. Her mental sickeness was continuing in type and beyond recovery and would have expected to be so all the rest of her life. Even when her mental condition looked stable at anyone time, such condition was still regarded as abnormal since her Chronic Psychosis was still active.
>
> She tended to get irrational and violent, and needed to be admitted into hosital on and off, often on remand.
>
> Medicinal tratement was same irrespective of the above two diagnoses.
>
> Both illnesses are under the group of Psychoses and tend to be chronic. Both illnesses can be serious in degree and the patient can be difficult to deal with on occasions.

3. She was seen at the out-patient clinic at fairly regular intervals and given medicines to take. The frequency of her hospital readmissions would indicate that she often defaulted with her treatment. This type of patients are often unreliable regarding intake of medicines.
4. Her judgement was expected to be impaired, especially during the periods her sickness got aggravated. She could be out of touch with reality at times.
5. It was possible for her to appear symptom-free to lay people at times, specially when she took her medication regularly. But in actual fact she was expected to harbour the mental sickness within her all the times for the rest of her life.
6. In the depressive phases of Manic Depressive Psychoses, suicidal attemps are common. They are not uncommon in Schizophernia either. Suicidal intentions or attempts are not seen in the Manic or Hypomanic phases of MDP.
7. During 1973-74 when she was stated to have sold her landed property, she attended the out-patient clinics for some months but needed admission into hospital in August 1974 on remand warrant as she was reported to be "running into the town-stripping herself" etc.

As she was already in the advanced stage of Psychosis at the time of signing the legal documents, I am confident to say that the patient was most probably not capable of managing and administering her own affaris. She was most probably not fit to sign any legal documents and was also not capable of understanding fully the consequences of any business transaction she entered into and was not capable of making her own decision regarding business transactions.

In any case, even when her mental condition was in remission, I would, most probably, not have advised her to enter into any business transaction or sign any legal document, and if she had signed the same she would be signing the same against my advice. I would say in the circumstances of her case, that she could be easily led into signing any document without understanding fully its effect upon her interest.

PW7, in his opinion *(supra)* recognised that fact that Chong Yu Tai's illness had remissions. What then is "remission" in the context of a person who was at times of unsound mind? An explanation was given by PW7 in the following qustion and answer, viz:

Question: With the advantage of you seeing the patient for no less than 40 times and in consideration of the various medical notes including the nurses notes' and the remand warrants issued by the Court as well as certificates of insanity issued by the doctor, if a line is drawn dividing normality and abnormality would you say that her mental condition was anything fluctuating over and above the line of normality?

Answer: I would agree to that. What I mean it sometimes get worse, it was sometimes in remission but it never touch the base line going into normalcy. She was always sick but sometimes more sick and sometimes less sick. During my tenure of stay in Sabah she was always sick, that is, from the time I first saw her till the time I left Sabah.

Other clues as to how PW7 interpreted the word "remission' can also be found in the following questions put to him and his answers thereto, viz:

Question: Would you also be able to say that her mental illness was continuing from 11 July 1973 to 1 August 1973?
Answer: Yes.

Question : During that period would you expect her to have the mental capacity to sign any document?
Answer : Depending on the severity or importance of the document, I may or may not allow her to sign.

Question : During the same period that is 11 July 1973 to 1 August 1973, would you also expect her judgment to be impaired ?
Answer: By looking at the dosage of the medicine I would say she is expected not to have a good judgment.

From the answers of PW7 *(supra)*, I am left in no doubt that Chong Yu Tai was not totally of unsoundness of mind in the sense that there was no lucid interval. If there was no lucid interval, she would not have been able to feed and clothe herself and avoid being run over by a car, acts which a lunatic would not be able to do unless there is some degree of sanity left in the person. This is also recognised by PW7 when he, in cross-examination, said that the patient could buy bread or take a bus home. It is apparent from the answers of PW7 *(supra)*, that it is a question of how good the judgment of Chong Yu Tai was when her illnes was in remission. PW7 diagreed

that Chong Yu Tai was suffering from hypomania or schizoaffective disorder rather than chronic schizophrenia. The significance of this disagreement is this-chronic schizophrenia is a far more serious illness than hypomania or schizoaffective disorder, both PW7 and DW6 appear to agree. In PW7's opinion, a chronic schizophrenia never returns to the baseline whereas a hypomania or a person suffering from schizoaffective disorder, according to Dr. Wong Yip Chong (DW6), a psychiatrist called by the defence, always returns to the baseline after the illnes which is episodic. DW6 also maintained that even in a chronic schizophrenic, there is a relapsing and remitting pattern in the illness without deterioration. According to DW6, a schizophrenic, including a chronic schizophrenic, who is also a hypomaniac, which DW6 opined is the case here, is better off because a hypomania is regarded as a somewhat more effective person than the general populace on account of their greater energy and inter-personal relating capacity and also because the illness of hypomania protects the illness of schizophrenia from deterioration. PW7 had personally seen and treated Chong Yu Tai while DW6 made his diagnosis after going through the available medical notes. PW7 does not dispute that at one stage Chong Yu Tai may be suffering from schizoaffective disorder but she was later re-diagnosed as "chronic schizophrenic". Even the various text on psychiatry which I was referred to admitted to the ever evolving classification or terminology of the illness with a lot of over-lapping. I do not think it serves any purpose to try and label the illness which Chong Yu Tai suffered because the result of each illnes, whatever the label or classification, does not necessary follow a definite text-book illustrated path, for example, some patients may recover while others not and so on. Whatever label or classification you attach to the illness which Chong Yun Tai suffered from, it is still essential to determine whether on the dates in question Chong Yu Tai was able to understand the general nature of what she was doing? Since I have ruled that no one can be totally insane, it remains to be decided whether Chong Yu Tai on the dates concerned had an understanding of the general nature of what she was doing. See **Chitty on Contracts,** 26th Edn., Vol.1 at para 617. In this regard, these are the evidence of PW7:

Q: During period from 11 July 1973 to 1 August 1973 this patient was already under your care and treatment?
A: Yes.

Q: Would you also be able to say that her mental illness was continuing from 11 July 1973 to 1 August 1973?
A: Yes.

Q: During that period would you expect her to have the mental capacity to sign any document?
A: Depending on the severity or importance of the document. I may or may not allow her to sign.

Q: During the same period that is 11 July 1973 to 1 August 1973, would you also expect her judgment to be impaired ?
A: By looking at the dosage of the medicine I would say she is expected not to have a good judgment.

Q: [Witness shown exhibit P72] Would you agree with me that this is a rather complex document to patient in this case ?
A: Yes.

Q: Would you also agree with me that if you were present at that time you would not advise her to sign this document P72?
A: This is a very serious and important document and I would not have allowed her to sign.

.....

Q: [Witness shown exhibits 72 and 74 (the two Memoranda of Transfer of Land).] Can you tell the court whether the patient was expected to be capable of understanding the nature and effect of these two documents?
A: These documents are complicated and they are in English. The patient Chong Yu Tai would not understand it. They have to be translated to her. Even then it would be difficult for her to understand what she was signing and what will be the consequence.

Q: Would you expect her to be easily led into signing these two documents?
A: It is possible if the person is known to her well enough like by her and perhaps she may have been indebted to her. In such circumstances she can be led to sign.

PW7 also testifed that he similarly would not have advised Chong Yu Tai to sign P74, the second Memorandum of Transfer. Under cross-examination, he said he would not expect her to understand the consequence of signing P72 nor how to operate a bank account even when her condition was less serious. As against this evidence, we have that of DW2 who was the then land clerk of the Land Office, Tawau. He testified that he had explained to Chong Yu Tai who appeared to him to understand that she was transferring certain fraction of the land for RM28,000 and that she signed the transfer P72. Similarly, he testified, Chong Yu Tai appeared to him to understand she was transferring 2 acres of her land for RM5,000 through the document P74. There is also the evidence of DW6 which reads:

Q: On 30 July 1973 was Chong Yu Tai in remission or relapse?
A: She had fully recovered.

Q: On 14 February 1974 what was mental capacity of Chong Yu Tai with respect to the signing of the memorandum of transfer?
A: She was of good contractual competence for the reason I said of the contract of 30 July 1973.

Q: [Witness shown P72.] Is this a complex docuement?
A: Not really.

Q: Would Chong Yu Tai be able to understand the nature of the transaction contained in P72 if it was interpreted and explained to her?
A: Yes.

Q: [Witness shown P74.] Would Chong Yu Tai understand the nature of the transaction in P74 if the content was explained to her?
A: Yes, if it was also interpreted to her. It is not really a complex document

[Under Cross-examination]

Q: Transaction of P72, is it easy to deduce how many acres of the deceased land she was transferring?
A: I need time to read. [Witness persued the documents]. Without the benefit of explanation, I will not be able to say.

Q: From the documents, could you say how much she was selling per acre?
A: No.

Q: Would you be able to tell how the payment was to be made with egards to this transaction?
A: Cursory reading. I do not think I can come to the knowledge.

Q: Deceased transferred part only [P72]-is it anywhere in this document which part or portion of her property was being transferred to the defendant?
A: Not indicated.

.....

Q: Would your answer be the same with regard to P74 as to your comprehension?
A: The same answers.

What does the law says regarding the understanding required? For this purpose I refer to **Chitty on Contracts,** 26th Edn, Vol.1 at para 617:

> 617 Nature of understanding required.
>
> The understanding and competence required to uphold the validity of a transaction depend on the nature of the transaction. There is no fixed standard of sanity which is requisite for all transactions. What is required in relation to each particular matter or piece of business transacted, is that the party in question should have an understanding of the general nature of what he is doing.

What, then, was Chong Yu Tai required to understand? The first transfer involved undivided share which brings with it the complication as to the division of the land, that is, who gets which part of the land. There is also the fractional calculation that was required to represent the partial transfer. All these have to be explained and this brings me to the opinion of DW6. Since he himself is not able to understand the nature of the two transactions that the two Memoranda of Transfer (P72 and P74) represent, how could he say Chong Yu Tai understood them. If a

psychiatrist finds it difficult to comprehend what the two memoranda of transfer purport to do, it is not difficult to see how much more difficult it is for a person like Chong Yu Tai who was under large dosages of drug to do so and, *a foriori*, when she had a history of mental illness. I find that DW6 had no basis to say that the two memoranda of transfer are not complex documents. Since the medicine had the effect of making Chong Yu Tai drowsy, the larger the dose the more drowsy one gets, I am in agreement with PW7 when he testified that drowsiness impairs judgment. One needs only drive a vehicle when one has taken medication which brings on drowsiness to realise how our judgment is impaired. In the present case Chong Yu Tai had between 23 March 1971 and 6 September 1973 taken daily between 200 mg to 400 mg of Largactil or its equivalent. For almost two months before 6 September 1973 (the date of the first transfer), Chong Yu Tai was prescribed, and I assumed she must have taken the drug or else she would have showed symptoms that required hospitalisation which had not happened, two dosages of 50 mg of Stemetil and one dosage of 200 mg of Largactil per day. 50 mg of Stemetil, according to PW7, is equivalent to 100 mg of Largactil. In fact, the dosage was much larger than when she was very violent and during her hospitalisation between 19 June 1970 and 3 July 1970. It is not difficult to picture her being in a near sedated state on account of the large continous dosages of drug. Given the condition she was in, I do not think she could understand the general nature of what she was doing when she signed the memorandum of transfer (P72) on 6 September 1973. From 3 October 1973 her dosage was increased to the equivlent of 500 mg of Largactil per day and this continued until 12 June 1974 from whence the daily dosage was reduced to the equivlent of 450 mg. till well after 20 June 1974 (the date of the second transfer). Here too, I have no doubt that because of her history of mental illness and the massive daily dosages of drug, Chong Yu Tai did not understand the general nature of what she was doing when she signed the memorandum of transfer (P74) on 20 June 1974. Because of her habitual insanity just before and during the time of the two transfers, the onus is on the defendant to prove that on those two dates, Chong Yu Tai was lucid and this cannot be satisfied by mere proof that at the time when the transfers were executed, Chong Yu Tai did not show signs of insanity or instability. See V.G. Ramchandran on **The Law of Contract in India (1983),** at p. 309. Apart from making a bare statement that the drug prescribed for Chong Yu Tai merely had a drowsy effect and merely affects the quality of life, he did not elaborate on why hudreds of mg.of drug cannot impair one's judgement. Therefore, the defendant had failed to discharge the burden of proving that the two transfers were made during the lucid intervals of Chong Yu Tai.

This brings me to the next question of whether the defendant knew Chong Yu Tai was of habitual insanity and whether the defendant knew she was insane on the dates of the two transfers. The defendant had testified that she was not aware. I have earlier already ruled that there was no evidence that Chong Yu Tai was insane during the period before 19 June 1970. Therefore, there is no question of the defendant knowing Chong Yu Tai to be insane during that time. At certain point in time before her admission to the hospital on 19 June 1970, Chong Yu Tai must have exhibited the conduct which made it necesary to have her admitted on 19 June 1970 but there is no evidence to say for how long before 19 June 1970 she was exhibiting such behaviour before she was taken to the hospital. PW2 testified in very general terms. PW2 described the condition of Chong Yu Tai covering the years from 1966 to 1986 and she referred to the year 1970 in these terms:

> In 1970 her condition worsened. I had to take her more often to the hospital. Her condition worsened in the sense that I and others cannot look after her because she became violent and she armed herself wih an axe and a cleaver. I was advised by the hospital doctor of Tawau to send her to the Kota Kinabalu mental hospital, at Luyang Road.

Implicit in her evidence is the allegation that she used to take Chong Yu Tai to hospital before 1970. She is not supported by any medical notes. As for the regularity of the visits to hospital, the records show two admissions, one on 19 June 1970 and the other on 8 October 1970. There was only one out-patient attendance in 1970 and that was on 23 November 1970. Therefore when she said "often" she meant three occasions. PW2 only testified to the alleged visits of the defendant and her husband to Chong Yu Tai in 1973 and 1974. PW3 testified in similar vein

about the visits in 1973 and 1974 of the defendant and her husband. There was also no allegation from her that the defendant knew about Chong Yu Tai's condition in 1970. PW6 similarly did not allege that the defendant knew of Chong Yu Tai's admissions to hospital and out-patient treatment in 1970. The Court was referred to certain evidence of PW6 as proving that the defendant knew Chong Yu Tai was of unsound mind, viz:

> Between 1970-1975 I kept in touch with Hong Teck Guan and the defendant. I met the defendant before 1971. The defendant stopped by taxi and called me "Kon Sang, Kong Sang." I answered her and defendant said she wanted to buy the land belonging to my mother. I replied and said "you know my mother is crazy". The defendant then said "Yes Kon Sang, your mother is crazy." The defendant also said she dared not want the land because my mother was crazy. The defendant also said if my mother discovered any tansfer of land my mother may use a broom to hit the defendant. The defendant then left.

Mr. Shim referred to *Wong Swee Chin v. PP* [1981] 1 MLJ 212 and argued that those evidence *(supra)* were not challenged and the Court should accept as "correct." The evidence referred to are so general in nature that there is not even a month mentioned, let alone the date and time where the alleged conversation was supposed to have taken place. That is not all. The alleged conversation *(supra)* suggests that the defendant knew Chong Yu Tai was already crazy but neverthless still wanted to buy her land but in the next breath, as PW6 wants the Court to believe, the defendant appears to shy away from buying because she was then told of the craziness of Chong Yu Tai. I agree with Mr. Ho, the evidence of PW6 *(supra)* apart from being imprecise was also inherently incredible. It can hardly be relied on as showing the defendant knew Chong Yu Tai was for the period from the 19 June 1970 to 2 July 1970 of unsound mind. I believe the defendant when she said she did not utter those words. The evidence of PW2, PW3 and PW6 also do not establish that the defendant knew Chong Yu Tai was insane for the periods from 8 October 1970 to 26 October 1970 and from 23 February 1972 onwards till her death. It must be noted that as from 19 June 1970, Chong Yu Tai was under treatment and medicine was given to her to prevent a relapse of her condition. This means that as long as she was taking the medicine, the symptoms, like violence carrying weapon and so on, would not appear; at least the evidence suggests that PW7 did not say that the symptoms would still persist despite the medicine. During these periods Chong Yu Tai according to PW7, could appear normal to anyone. There is no evidence to suggest that she was not taking her medicine and, in fact, the evidence shows otherwise. Therefore, it must be the case that for as long as she was taking her medicine after her discharge from the hospital, she would not be displaying the symptoms. That being the case and since she was taking her medicine, it cannot be true then, as what PW2, PW3 and PW6 wanted the Court to believe, that Chong Yu Tai would be displaying the symptoms whenever the defendant and her husband visited her because the symptoms were already suppressed by the medication she was taking. Apart from that, their evidence also suffers from the lack of details as to time, date and month. They never advert to those occasions where Chong Yu Tai had to be admitted and they never state that the defendant was there to witness the behavior of Chong Yu Tai which required her admission. Surely, if anyone can remember what happened some twenty years ago they must need something to jolt their memory like referring to the dates when Chong Yu Tai was admitted to hospital for which they were involved and if those were the occasions when the defendant saw Chong Yu Tai. There was no such evidence. Their evidence are wholly unreliable to establish knowledge. As for the defendant's friendship with Chong Yu Tai which went well back to the 1950's such meetings as the defendant had with Chong Yu Tai would tend to show that Chong Yu Tai was known to the defendant to be sane because the evidence shows she was sane during those periods. Mr. Shim in his closing speech indirectly conceded this when he said there is no conclusive evidence to establish that Chong Yu Tai was insane before June 1970.

There is, therefore, no evidence to even remotely suggest that the defendant knew of Chong Yu Tai's admissions to the hospital nor her out-patient treatment nor the alleged misbehaviour of Chong Yu Tai. As for the two specific days where the two transfers were executed, I have no reason to disbelieve the testimony of DW2 and that of the defendant to the effect that they did

not see Chong Yu Tai exhibit any of the behaviour described by PW6, such as spitting, shouting, stripping and so on. My finding that Chong Yu Tai appeared normal on those dates to the defendant and to DW2 is also supported by the opinion of PW7 who said Chong Yu Tai could very well "appear symptom-free to lay people" (exhibit P79).

It is the submission of Mr. Ho that if the Court should find that Chong Yu Tai died insane, the action is not statute-barred. Since I have decided that she in fact died a lunatic, the defence of statute-barred fails.

To sum up, my conclusions are these. The transfers were done where Chong Yu Tai was insane but the defendant on the dates of the two transfers was not aware that Chong Yu Tai was of unsound mind. The plaintiff had failed to prove, on a balance of probabilites, that the defendant, at the time of the two transfers and at any time prior to that, knew Chong Yu Tai was insane. Since it is the law that the plaintiff must prove not only the insanity of Chong Yu Tai, which the plaintiff had done, but also prove the fact that the defendant at the relevant time knew of the insanity of Chong Yu Tai, which the plaintiff had failed to do, the plaintiff fails in his claim. I therefore dismiss the plaintiff's claim with costs to the defendant to be taxed.